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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

COMMITTEE OF THE WHOLE

PROVISIONAL SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

held at the Neue Hofburg, Vienna, on
Friday, 18 August 1978, at 4.20 p.m.

Chairman Mr. RIAD (Egypt)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final summary record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

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CONSIDERATION OF THE QUESTION OF SUCCESSION OF STATES IN RESPECT OF TREATES IN ACCORDANCE WITH RESOLUTIONS 3496 (XXX) AND 31/18 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1975 AND 24 NOVEMBER 1976 (item 11 of the agenda) (continued) (A/CONF.80/4 and 5 and Corr.1; A/CONF.80/WP.1 and WP.2)

Second report of the Informal Consultations Group (A/CONF.80/C.1/L.62) (continued)

Articles 12 and 12 bis

Draft resolution concerning article 30

Mr. JOMARD (Iraq) said he supported the third paragraph that the Informal Consultations Group recommended should be added to the text of article 12 proposed by the International Law Commission, because the new paragraph marked a step forward in the progressive development of international law in that it reduced the international obligations of newly independent States. He also supported the new article 12 bis proposed by the Group, which confirmed a rule of law accepted by the international community and afforded newly independent countries an opportunity to assure their future.

Mr. VREEDZAAM (Surinam) said that, in his view, newly independent countries must be given the possibility of rejecting any treaty obligation accepted by the predecessor State and concerning the establishment of military bases on the territory to which the succession of States related, as was provided by the new paragraph 3 of article 12 proposed by the Informal Consultations Group. He also supported the principle of the permanent sovereignty of every people and every State over its natural wealth and resources, setforth in the new article 12 bis. He would, therefore, vote in favour of those two texts, as well as the draft resolution concerning article 30.

Mr. FALLAH (Algeria) said that, in a spirit of conciliation, he would support the contents of the two provisions submitted by the Informal Consultations Group in its second report (A/CONF.80/C.1/L.62). He would have preferred the draft submitted by the Argentine delegation, because he considered that the two provisions formed a whole and that it would have been better not to separate them so as not to reduce their force and political significance. He would, however, vote in favour of the text proposed by the Group, because that text removed the ambiguities of article 12 as proposed by the International Law Commission and unequivocally affirmed the predominance of the principles of the self-determination of peoples and the independence of States.

His delegation considered, however, that the reference to the principles of international law was insufficiently precise, and it was in a spirit of conciliation that it agreed to the omission from article 12 bis of a reference to General Assembly resolution 1803 (XVII) concerning the permanent sovereignty of States and peoples over their natural wealth and resources. Out of legal purism, the Informal Consultations Group had not referred to that resolution, but it remained clearly understood that a reference to the principles of international law constituted, in particular, a reference to United Nations resolutions, including General Assembly resolution 1803 (XVII) and the resolution relating to the Charter of Economic Rights and Duties of States. His delegation welcomed the fact that the problem posed by the establishment of foreign military bases and the principle of the permanent sovereignty of every people and every State over its natural wealth and resources had been taken into consideration. It would, therefore, despite their imperfections, support article 12, paragraph 3, and article 12 bis in the name of what it considered to be the progressive development of international law.

He shared the concern expressed by the representatives of Angola, Mali and Romania, among others, about the draft resolution relating to article 30. In his opinion that draft resolution contributed nothing new and might, rather, reduce the scope of the provisions of the convention relating to the settlement of disputes.

Mr. RANJEVA (Madagascar) noted that the lege ferenda nature of the codification of certain rules meant that the Conference would inevitably have to take a position on political issues. He was gratified, therefore, that the Informal Consultations Group had reached a compromise solution on the problems dealt with in articles 12 and 12 bis, which were essentially political problems.

With respect to article 12, paragraph 3, his delegation considered that the expression "military bases" must be taken to mean not only fixed military installations but all installations that could be used for military purposes. It should be noted that his country had consistently pressed for the establishment of a demilitarized zone in the Indian Ocean.

With respect to article 12 bis, his delegation considered that the principle of the sovereignty of peoples over their natural resources must be understood as comprising the right to exploit natural resources because, if the right of exploitation was not incontrovertibly acknowledged, the principle set forth in article 12 bis would be meaningless.

Mr. DIENG (Senegal) congratulated the Informal Consultations Group on having reached a compromise between positions of principle that at the outset had been very far apart, reflecting as they had divergent national interests. Of course, the compromise appeared to him to be inadequate, and he would have preferred the Argentine proposal - supported by the non-aligned countries - which had preserved the fundamental unity existing between the question of natural resources and that of military bases. Nevertheless, out of a desire for conciliation, he would agree to article 12, paragraph 3, and article 12 bis, as proposed by the Informal Consultations Group. In article 12 bis, however, it would be preferable, in the phrase "the principles of international law" to put the word "principle" in the singular, because the phrase "the principles of international law" referred to international law in general and thus somewhat restricted the principle of the permanent sovereignty of every people and every State over its natural wealth and resources. He also hoped that that principle would be interpreted as comprising the right of every State to exploit its natural wealth and resources.

In his opinion, the draft resolution concerning article 30 served no useful purpose because, when treaty obligations or rights were incompatible there was an objective dispute and the parties must then resort to consultation and negotiation under the normal procedure for the settlement of disputes provided for by the convention.

Mr. ASHTAL (Democratic Yemen) said that he unreservedly supported article 12, paragraph 3, and article 12 bis as proposed by the Informal Consultations Group. In view of the article on the settlement of disputes recently adopted by the Committee, he considered that the draft resolution concerning article 30 served no useful purpose, but he would have no difficulty in accepting it if the Committee deemed it necessary.

Mr. AHIPEAUD (Ivory Coast) said that his country, which respected international or regional servitudes imposed on States, agreed that treaties relating to boundary régimes and treaties establishing an international régime restricting the use of a territory, as in the case of international waterways and the right of innocent passage in the territorial sea, should not be affected by a succession of States. It was not its understanding, however, that the rules of succession of States did not apply to treaties providing for the establishment of foreign military bases, particularly since such bases might have been used to fight against the successor State. Far from correcting the tendentious text of article 12 proposed by the International Law Commission, the new paragraph 3 proposed by the Informal Consultations Group established the rule of continuity for treaties concerning the establishment of foreign military bases; that was unacceptable to his delegation. That rule might be understandable in the case of military bases of world interest, but even in that case the treaty should form the subject of negotiations with the successor State. His delegation therefore reserved its position with respect to article 12.

With regard to article 12 bis, his delegation saw no objection to affirming the permanent sovereignty of every State over its natural wealth and resources, but it was somewhat apprehensive about the use of the word "people".

Mr. KOROMA (Sierra Leone), referring to article 12 bis, said that in the Declaration on permanent sovereignty over natural resources (General Assembly resolution 1803 (XVII)), the General Assembly had mentioned the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests and the need to respect the economic independence of States and had added that "The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities... In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law." Article 12 bis, on the other hand, reserved "the principles of international law affirming the permanent sovereignty

of every people and every State over its natural wealth and resources". That article referred only to the principles of international law, whereas the Declaration he had mentioned referred to both international and national law. In an instrument subsequent to the Declaration, namely the Charter of Economic Rights and Duties of States, it was not stated that the principles of international law should govern economic relations. In that respect, article 12 bis marked no progress. Moreover, supposing that there was justification for mentioning the principles of international law in article 12 bis, some further clarification should be given, because the content of those principles was uncertain. Neither the principle of acquired rights nor that of national treatment clarified the question. The Declaration on permanent sovereignty over natural resources militated against prompt, adequate and effective compensation. Moreover, the principles of economic self-determination, independence, sovereignty and equality were all principles of international law. Accordingly, although it appreciated the efforts which the Informal Consultations Group had made in formulating the text of article 12 bis, his delegation considered that the article needed to be improved.

Mr. ABOU-ALI (Egypt) said that his delegation would vote for each of the texts contained in document A/CONF.80/C.1/L.62. Article 12, paragraph 3, enunciated a principle that was absolutely self-evident. Article 12 bis, although drafted in vague terms, was entirely acceptable to his country, which had always supported resolutions affirming the permanent sovereignty of States over their natural wealth and resources. The draft resolution concerning article 30 was not really necessary, for it fell within the framework of the peaceful settlement of disputes, but his delegation would join in any consensus on the resolution.

Mr. MARESCA (Italy) said he considered that article 12, paragraph 3, was a useful complement to the previous two paragraphs. Each term in the new paragraph had been carefully weighed and that addition was to be welcomed.

His delegation also welcomed the new article 12 bis, for it had always felt that the question covered by that provision should be dealt with in a separate article. With regard to the wording, however, it would have been preferable to use expressions that were more in keeping with legal terminology.

It would be better to speak of rules, rather than principles, of international law, for rules were obligatory in character. Again, the term "people" was not very satisfactory, since permanent sovereignty over natural wealth and resources did not lie with a people, as an ethnic entity, but with the successor State, as a legal and political entity. In short, article 12 bis constituted a referral to the international legal order. It had the advantage of beginning with a forceful formulation, but it was regrettable that that formulation appeared again in article 13, a fact that took away some of its force.

In his opinion, the draft resolution concerning article 30 did not duplicate the provisions on the settlement of disputes but had a scope of its own; moreover, it related to the ordinary questions which might arise in the case of a uniting of States and not to real disputes.

In order to make it quite clear that the process of consultation was separate from that of negotiation, the word "of" should be inserted before the word "negotiation" in the second preambular paragraph. Consultation was simply an exchange of views, whereas negotiation implied the will to reach agreement.

Mr. GILCHRIST (Australia) said that article 12, as drafted by the International Law Commission, had not posed any serious difficulties for his delegation, even though it had contained some ambiguities. However, the paragraph 3 proposed by the Informal Consultations Group did not present any special difficulties either, and his delegation would therefore vote in favour of it.

In the Informal Consultations Group, his delegation, out of a desire to facilitate the elaboration of a compromise text, had not raised any objections to the wording of article 12 bis. Nevertheless, it was somewhat disturbed by the replacement of the words "relating to" by "affirming". The former expression showed quite clearly that all the principles of international law were applicable, whereas the new term might be interpreted as restricting the application of the general principles of international law as far as the principle of the permanent sovereignty of every people and every State over its natural wealth and resources was concerned.

His country recognized the permanent sovereignty of every State over its natural resources but considered that a State was also under an obligation not to prejudice the legitimate interests of neighbouring States and other States dependent on shared natural resources. The principles of international law did not confer on States the right to unrestricted exercise of their permanent sovereignty over their natural resources. The principles of international law beneficial to neighbouring States should be taken into account. His delegation wondered whether the exception set forth in article 12 bis was not now so general that it might prejudice riparian rights or rights of access that were essential to the successor State or to another party to the treaty. Although his delegation was somewhat reassured by the interpretation placed by a number of other delegations on article 12 bis, it would have preferred the Group to use a formula such as "in accordance with international law". Out of respect for arduously negotiated compromise texts, his delegation would lend its support to the provisions contained in document A/CONF.80/C.1/L.62, on the understanding that the principles, or rather the rules, of international law would continue to govern situations such as those he had mentioned.

Mr. OSMAN (Somalia) reminded the Committee that, in 1977, his delegation had stated its views on article 12 at some length. It fully supported the new paragraph 3 that was now being proposed.

Article 12 bis reaffirmed a principle already embodied in United Nations resolutions, namely, the principle of the exercise of permanent sovereignty over natural resources. Reaffirmation of that general principle of international law was especially justified in a convention on succession of States in respect of treaties. It should be noted that article 12 bis was closely linked to article 12.

His delegation regarded the draft resolution concerning article 30 as superfluous, in that machinery for the settlement of disputes already existed. However, it was not opposed to the draft resolution if indeed the authors had particular situations in mind.

Mr. FLEISCHHAUER (Federal Republic of Germany) said his delegation had always considered that article 12 was closely linked to article 11. Not only boundary treaties and treaties on boundary régimes but also treaties of a territorial character which had been concluded in the interests of other

territories and States should remain unaffected by a succession of States. It would be idle to speculate whether article 12 fell under the heading of the codification or of the progressive development of international law. In either event, it was based on the same reasoning as article 11: treaties of a territorial character which concerned other States should follow the territory to which they related. It was with that consideration in mind that his delegation had always supported article 12.

With regard to the new paragraph 3 which it was proposed to add to article 12, he observed that the question of treaties on the establishment of military, naval or air bases was altogether outside the scope of the article and that the exception for which it made provision should not be extended. If, however, the Conference wished to add a third paragraph to article 12, his delegation would agree to the provision.

Article 12 bis was the product of a difficult compromise and was based on principles with an ill-defined content. The article was worded imprecisely in terms that might give rise to varying interpretations. It would have been better to refer simply to international law, as had been suggested in the Informal Consultations Group. Consequently, his delegation would be compelled to abstain if article 12 bis was put to the vote.

As to the draft resolution concerning article 30, it should be emphasized that there was a gap in that article in respect of incompatible obligations under treaties that were kept in force in accordance with the provisions of those treaties in the former States which had united. The draft resolution covered precisely a situation of that kind, which was not automatically covered by the provisions on the settlement of disputes. His delegation therefore favoured the adoption of the draft resolution.

Mr. KAKOOZA (Uganda) said that, to his mind, the draft resolution under consideration served no useful purpose, since an article on the settlement of disputes had already been adopted. Admittedly, the term "dispute" was not defined in article 2, but the disagreements to which the draft resolution related would constitute disputes and would therefore be covered by the article on the settlement of disputes. His delegation could see no justification for the draft resolution and was therefore unable to support it.

Mr. LANG (Austria), referring to the statement made by his delegation in connexion with article 12 at the 19th meeting of the Committee (A/CONF.80/16, pp. 132-133), said his delegation still took the view that article 12 should be adopted as drafted by the International Law Commission. However, it appreciated the concern which had been expressed regarding the establishment of military bases and the exploitation of natural resources. For that reason, it was ready to agree to the texts proposed for article 12, paragraph 3, and for article 12 bis. With regard to article 12, paragraph 3, he reminded the Committee that his country had formally undertaken not to permit the establishment of foreign military bases on its territory. As to article 12 bis, he did not think it essential to reaffirm the principle of the permanent sovereignty of every people and every State over its natural wealth and resources, but such a reaffirmation was none the less acceptable, for it placed that principle, or rather those principles, within the general context of international law, so that they were not viewed as isolated political objectives but as interdependent elements of international law. He had noted the fact that one of the authors of the proposal had stated in the Informal Consultations Group that the "clean slate" principle did not apply to treaty obligations concerning shared natural resources; the fact that such resources were common to two or more States meant that they were subject to the rule of continuity. His delegation hoped that article 12, paragraph 3, and article 12 bis would be adopted by a large majority.

Lastly, he pointed out that his delegation had already had occasion to commend the initiative taken in submitting a draft resolution on incompatible treaty régimes and that it supported that draft.

Mr. MUSEUX (France) said that he had preferred the original wording of article 12, despite the element of imprecision which it had contained. He was afraid that any addition to that article would only cause further uncertainty about its actual scope instead of improving its wording. His delegation had no fundamental objection to the inclusion of an express reference to military bases, since paragraph 3 was based on the interpretation given by the International Law Commission. The concept of "military" bases was not, however, a legal one and the Commission's commentary could provide only general guidance in the matter. Admittedly, an agreement on the establishment of a base did not in itself represent an obligation attaching to a territory, but each case still had to be assessed on the basis of its particular characteristics and its true legal nature.

With regard to article 12 bis, the wording of which was not very felicitous, his delegation was of the opinion that, if it was necessary to say anything at all - and it was not sure that it was - it would have been preferable to refer expressly to conformity with international law. His delegation would therefore be unable to support that provision. It was, however, true that the principles of international law must be interpreted in conformity with international law and that to refer to those principles was therefore to refer to customary international law. In international law, there was, moreover, no principle which could be applied without being limited by the rules of law. Although that was how his delegation interpreted that provision, it could not accept it because its wording was too imprecise.

Mr. ROVINE (United States of America) said that article 12 was perhaps the one which had caused the International Law Commission the greatest difficulties. The discussions in the Committee of the Whole had also shown how complex its provisions were, but the Informal Consultations Group had been able to find an acceptable solution in the form of the paragraph 3 which it was proposing to add to the text of article 12. As his delegation saw it, that paragraph was in the nature of a clarification concerning military bases.

The Informal Consultations Group had, however, been unable to achieve a genuine consensus on article 12 bis. Although the idea of adding words such as "in conformity with international law" to that provision had been widely supported, it had unfortunately been decided not to retain such wording in the text to be submitted to the Committee. His delegation could therefore not support that text. It did, however, interpret the principles referred to in article 12 bis in the light of General Assembly resolution 1803 (XVII), relating to permanent sovereignty over natural resources. In view of those considerations, it would abstain in the vote on article 12 bis. Nevertheless, it appreciated the close link between that provision and article 12 and recognized the value of article 12 bis for newly independent States. It was his delegation's understanding that the "clean slate" principle stated in that provision would apply essentially to the consumption or, in other words, the exploitation of natural resources, and would not affect territorial régimes relating to such matters as access to the sea, ports and transit rights on rivers.

Referring to the draft resolution concerning article 30, he said that the main purpose of that text was to draw attention to the problem of the incompatibility of treaty obligations raised by article 30. It was intended merely as a statement of fact, not as an implication that the problem dealt with by the Conference would inevitably give rise to disputes.

Sir Ian SINCLAIR (United Kingdom) noted that, at the Committee's 20th meeting (A/CONF.80/16, para. 17, p. 137), his delegation had stated that, in its opinion, treaties concerning military bases did not come within the scope of article 12, which in no way sanctioned the continuance of such treaties. His delegation had no difficulties with the new paragraph 3 relating to that question, since it should be regarded as embodying the agreed interpretation of article 12, with the object of dispelling any possible doubts. For that reason, his delegation considered it important to retain the words "do not apply", which clearly implied that paragraph 3 could not be interpreted as applying to treaty obligations relating to the demilitarization of a particular region or to other régimes - such as restrictions on military activities - relating to the use of a particular region.

The proposed article 12 bis caused greater difficulties for his delegation, which would have to abstain if the provision was put to the vote because its wording was ambiguous. His delegation had had occasion to express its point of view on the principle of the permanent sovereignty of States over their natural resources in the General Assembly and other bodies. While recognizing the existence of that principle, it considered that its application was governed by the principles of international law, which, in the final analysis, ought to be able to resolve any possible conflict between the principle of permanent sovereignty and other concepts, such as that of acquired rights. It was in that sense that his delegation would interpret article 12 bis. Account should, moreover, be taken of General Assembly resolution 1803 (XVII), which contained the most recent generally recognized description of the concept of the permanent sovereignty of States over their natural resources and of its relationship to international law. He also noted that the International Law Commission had first decided to include article 11 and also article 12, to which article 12 bis was related, in part I of the draft on the grounds that those restrictions on the "clean slate"

principle should have general application. It had then drafted article 33, paragraph 3, providing for the application of the "clean slate" rule in cases of separation of parts of a State. Since the Committee had decided to delete article 33, paragraph 3, the rules contained in part IV of the draft were now based exclusively on the principle of ipso jure continuity. In such circumstances, it appeared that, although articles 11, 12 and 12 bis were, in principle, generally applicable, they must be interpreted and applied mainly, if not exclusively, in the light of the provisions of part III of the draft, which related to newly independent States.

With regard to the draft resolution concerning article 30, he said that he shared the view expressed by the representative of the United States.

Mr. EUSTATHIADES (Greece) said that it might have been thought that the question of military bases did not come within the scope of an article dealing with territorial régimes. In fact, however, the problem had mainly been one of deciding whether or not that question should be dealt with in the draft. In his opinion, the new paragraph 3 of article 12 was a welcome provision and his delegation would vote in favour of it.

His delegation also considered that the Informal Consultations Group had been right to state the principle of the permanent sovereignty of States over their natural resources in a separate article, even though that principle was related to the questions dealt with in article 12.

The CHAIRMAN invited the members of the Committee to vote first on article 12 bis (A/CONF.80/C.1/L.62, para. 3), then on the paragraph 3 which it was proposed to add to article 12 (A/CONF.80/C.1/L.62, para. 2) and on article 12 as a whole and, finally, on the draft resolution concerning article 30 (A/CONF.80/C.1/L.62, para. 6).

Article 12 bis was adopted by 74 votes to none, with 12 abstentions, and was referred to the Drafting Committee, with the request that it should propose a title for that article.

Article 12, paragraph 3, was adopted by 84 votes to none, with 1 abstention.

Article 12, as a whole, was adopted by 86 votes to none, with 1 abstention, and was referred to the Drafting Committee, with the request that it should propose a title for that article.

The CHAIRMAN observed that, at its 5th meeting, the Conference had adopted the text of article 11, but had deferred a decision on the title of that article until it had completed its consideration of article 12. Consequently, he suggested that the Committee should request the Drafting Committee to propose a title for that article.

It was so decided.

The CHAIRMAN invited the members of the Committee to take a decision on the draft resolution concerning article 30 (A/CONF.80/C.1/L.62).

The draft resolution concerning article 30 was adopted by 49 votes to 8, with 30 abstentions, and was referred to the Drafting Committee, with the request that it should propose a title for that text.

Proposed new article 39 ter.

Mr. MONCAYO (Argentina) withdrew his delegation's amendment for the addition of a new article 39 ter (A/CONF.80/C.1/L.58).

ORGANIZATION OF WORK

Mr. RANJEVA (Madagascar) said he would like to know when the Drafting Committee expected to complete its work.

Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee would in any event have to hold one more meeting, at which it hoped to be able to complete its work.

The meeting rose at 6.15 p.m.